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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,096	06/15/2001	Brian E. Joseph	1474(Touchstone)	7698

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EXAMINER

VO, HAI

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/27/2002

3

Please find below and/or attached an Office communication concerning this application or proceeding.

mk-2

Office Action Summary

Application No.	Applicant(s)	
09/882,096	JOSEPH ET AL.	
Examiner	Art Unit	
Hai Vo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12 and 14-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: The multivoid core to be elected either (a) polymer or (b) metal.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 2, 5, 6, 7, 10, 11, and 14-18 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case.

Art Unit: 1771

In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Auzville Jackson, Jr. on 08/15/02 a provisional election was made with traverse to prosecute the invention of metal species (b). Affirmation of this election must be made by applicant in replying to this Office action. Claims 4 and 13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by York (US 3,672,022) or Landi et al (US 5,039,567). York discloses a wire core structure including a plurality of planar wire core ribbons which are formed of wire bent at right angles to form anchor sections on opposite sites of the core to engage the face sheets (figures 1 and 6). It is the examiner's position that York anticipates the

Art Unit: 1771

claimed subject matter. Landi discloses a laminated honeycomb structure comprising a honeycomb core sandwiched between two facing sheets wherein the core having a plurality of wells shown in figures 7a-7c. The core and the facing sheets are made of polyurethane (abstract). It is the examiner's position that Landi anticipates the claimed subject matter.

5. Claims 1-2, and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Czaplicki (US 5,028,474). Czaplicki discloses a three-dimensional structure comprising a core sandwiched between two facing sheets wherein the core having a plurality of unit cells providing a serpentine path between adjacent rows of the cells in a transverse direction within the sandwich panel construction (figure 8, column 9, lines 1-8). The core and the facing sheets are formed from metal or other composite (column 1, lines 31-39). With regard to claim 5, it is the examiner's position that the article of Czaplicki is identical to the claimed article prepared by the method of the claim, because both articles use the same materials, having structural similarity (sandwich panel construction). Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ

Art Unit: 1771

289,291 (Fed. Cir. 1983). The Czaplicki reference either anticipated the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with Czaplicki. It is the examiner's position that Czaplicki anticipates the claimed subject matter.

6. Claims 1-3, and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Campbell (US 3,638,573). Campbell discloses a laminated honeycomb structure comprising a honeycomb core sandwiched between two facing sheets wherein the core having a plurality of openings 6 which afford communication of an igniter with combustible material (figure, column 1, line 56 et seq.). The core is formed from aluminum and the facing sheets from aluminum foil reinforced with glass fibers which is analogous to aluminum matrix composite (column 2, line 10 and column 5, lines 42-60). With regard to claim 5, see product-by-process rational with respect to claim 5 in the paragraph no. 5. It is the examiner's position that Campell anticipates the claimed subject matter.

7. Claims 1-3, and 5-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Evans et al (US 6,371,201). Evans teaches a heat exchanger comprising a plurality of tubes 12, each tube having a core made from aluminum alloy and the external and interior surfaces of the core having a composition cladding thereon (column 2, lines 52-58). The composition cladding coating is analogous to the claimed layer of

Art Unit: 1771

composite stiffening material. The composition cladding is aluminum matrix composite (column 2, line 58 et seq.). It is the examiner's position that Evans anticipates the claimed subject matter.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 10, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Czaplicki (US 5,028,474). There is no evidence in the records to convince the examiner that the size of the void is significant or anything more than one of numerous sizes a person of ordinary skill in the art would find obvious for the purpose of providing the size of the void therefore, the size of the void in itself would not render the claims patentable over Czaplicki. See ***Graham v. John Deere Co.***, With regard to claim 14, see product-by-process rational with respect to claim 5 in the paragraph no. 5.
10. Claims 10-12, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell (US 3,638,573) or Evans et al (US 6,371,201). With regard to claim 10, see obviousness rational in the paragraph no. 9. With regard to claim 14, see product-by-process rational with respect to claim 5 in the paragraph no. 5.

Art Unit: 1771

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al (US 6,371,201) in view of McCullough et al (US 6,245,425). Evans is silent as to the ceramic fibers incorporated into the cladding composite of the heat exchanger. McCullough teaches ceramic fibers as a reinforcing material of the aluminum matrix composite (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the ceramic fibers as a reinforcing material of the aluminum matrix composite motivated by the desire to obtain the heat exchanger that has improved strength and exceptionally light weight.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00 (EAST). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


TERREL MORRIS
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